IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 228 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRENDRA MAHASHETH

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 228 of 1988

MR YN OZA for Petitioner No. 1

MR SHETH, AGP for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/12/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the order dated 29th July, 1987, by which his services have been terminated with retrospective effect, i.e. with effect from 19-12-1983.

2) At the relevant time, the petitioner was serving

as a Deputy Executive Engineer (Civil) in the Kadana Project Circle, Diwada colony. As per the impugned order of termination, the petitioner has applied for leave from 24-2-1983 to 4-12-1983 and from 19-12-1983 to 31-9-1985 on the ground of illness of his mother. It seems that, initially, leave for the period from 19-12-1983 to 16-2-1984 was sanctioned by the department. Subsequently, the petitioner was informed by telegram dated 22-3-1984 as well as by some letters that the said leave was cancelled and he was asked to resume his duty. The petitioner failed to resume his duty. Thereafter, the petitioner has made representations from time to time for sanction of leave on the ground of his personal sickness, as according to him, he has developed some disease during the intervening period. The petitioner was asked to resume his duty by letter dated 19-10-1984 which is at page 24 in the compilation and the petitioner replied the same by letter dated 10-12-1984, which is at page 25, in which he has expressed his sorrow and regret for not resuming his duty immediately. He, however, requested that his absence may not be treated as willful absence. The petitioner has also produced various medical certificates to the authority. The petitioner has also placed on record copy of the order of the Executive Engineer, by which the Executive Engineer has recommended the case of the petitioner to the State Government, asking the Government to allow him to resume his duties, considering his meritorious career. The State Government, ultimately, without giving any opportunity of being heard to the petitioner, passed the impugned order, by which his services have been terminated with retrospective effect. The petitioner also made a representation on 11-8-1987 to the authority giving particulars about the period in question. However, his representation was rejected on 21-10-1987.

3) A learned Single Judge of this Court, while admitting this matter on 1-4-1988, has passed the following order :

"Rule.

In the facts and circumstances of the case, interim relief as prayed for cannot be granted. Grant of interim relief at this stage would amount to allowing the petition without adjudicating the issue involved in the petition. In the facts and circumstances of the case such an interim relief is not warranted.

The respondents are directed to file affidavit-in-reply latest before October 31,

1988. Thereafter, it will be open to the petitioner to request the Court for fixed date of hearing."

4) It is a matter of regret that even in the matter of 1988, till today, no reply has been filed by the State Government and no such reply is finding place in the compilation. In that view of the matter, the averments made in the petition are not controverted by filing any reply, though more than 14 years have passed. On behalf of the petitioner, it is submitted that before passing the impugned order, the minimum requirement of natural justice should have been followed and he should have been given show cause notice so that he could have given his reply to the authority to substantiate his say that he was suffering from abdominal tuberculosis. It is also submitted that it is not open for the department to terminate the services of any employee with retrospective effect, which has been done in this case.

5) Considering the fact that the impugned order is passed without giving opportunity of being heard, and since the averment in the petition are not controverted by the department, this petition is required to be allowed only on the aforesaid ground and the order in question is required to be set aside as the petitioner was not given any opportunity of being heard, by asking his explanation before passing the impugned order. In a given case, it may not be necessary to hold a full fledged inquiry, but, at least opportunity of being heard is required to be given so that the principles of natural justice can be complied with.

6) This cannot be said to be a simpliciter discharge but the services of the petitioner were terminated in view of the aforesaid misconduct, by which he allegedly remained unauthorisedly absent. Under the circumstances, at least, the explanation was required to be called for and considered before passing the impugned order. Even the leave, which was sanctioned earlier, was subsequently cancelled. The petitioner has gone to his native place, i.e. in Bihar State and, therefore, naturally he could not resume his duty forthwith, when his leave was cancelled. Even otherwise, the petitioner was not even suspended at the relevant time when the inquiry was pending and, therefore, the order of termination with retrospective effect is not permissible nor the learned AGP is able to support the said order, by which services of a workman can be terminated with retrospective effect.

Under the above circumstances, the impugned order is required to be set aside on the ground that the same is passed without hearing the petitioner. It will be open for the department to take appropriate action against the petitioner in accordance with law for the alleged act of remaining absent. The impugned order is set aside only the ground mentioned earlier. Since the petitioner had remained absent for a long period, in the facts of the case, he is not required to be given the benefit of any backwages for the entire intervening period. Since the petitioner was not heard by the department before passing the impugned order, this petition is allowed on this ground. The respondents are directed to reinstate the petitioner and thereafter, it will be open for the department to hold appropriate inquiry in accordance with law. If the department is of the view that the services of the petitioner are not required to be continued and his services are required to be terminated on any of the aforesaid grounds, it will be open for the department to take action in accordance with law. The respondents may reinstate the petitioner within a period of one month from today and the petitioner will not be entitled to any monetary benefit for the intervening period and only his service should be treated as continuous service, for enabling him to get all other benefits.

7) This petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)
/malek